section ran as follows: "Except as provided in ss. 435, 436 and 472, no Court shall try any person for an offence committed in contempt of its own authority." Under that section it was held that a Sessions Judge was not debarred from trying a case of forgery in which he had sanctioned the prosecution as a District Judge. The *ratio decidendi* in that case was much the same as that which has been indicated above. The learned Judges who decided that case said:—

"The Legislature seems to have been impressed by the sense of this inconvenience, and, consequently, in enacting s. 472 of the Code, it gave jurisdiction to the Court of Sessions to try all cases of contempt committed before it in which the offence is triable exclusively by the Court of Session. It would be difficult to suppose that the Legislature had any other intention in regard to offences of the same kind committed before the Judge of the Court of Session in his Civil capacity, and certainly s. 473 is not so worded as to oblige us to hold that there was any other intention."

It will be seen that s. 487 of the present Code, which corresponds to s. 473 of the Code of 1872, is couched in more definite language. The prohibition is restricted to a "Judge of a Criminal Court," and that being so, we think we must place a strict construction on the words "as such Judge," and hold that they do not include a Judge of a Civil Court or District Judge.

For these reasons we are of opinion that the Sessions Judge was not debarred by this section from trying the case which was the subject of this reference.

T. A. P. *Appeal dismissed.*

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION.

Before Mr. Justice Norris.

JOTENDRONAUTH MITTER *v.* RAJ KRISTO MITTER AND ANOTHER.* 1889 *July* 8.

Transfer of suit—Practice—Minor defendant. Application by next friend of, for transfer of suit when no guardian ad litem *has been appointed—Civil Procedure Code (Act XIV of 1882), ss. 440, 441, 443, 449.*

A suit was instituted in a Mofussil Court against two defendants, one of them being a minor. Before a guardian *ad litem* had been appointed for

* In the Matter of s. 13 of the Letters Patent of 1865, and in the Matter of a Suit No. 62 of 1889, in the Court of the Second Subordinate Judge of the 24-Pergunnahs.

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the minor defendant, an application was made to the High Court to transfer the case from the Mofussil Court to the High Court in its ordinary original civil jurisdiction by the minor defendant through a next friend. It was contended that the application was informal, and could not be granted, and that no such application could be made on behalf of the infant defendant until a guardian *ad litem* had been appointed, and then it should be made by him.

Held, that the objection should not prevail, and that this application could be made through the next friend.

In a partition suit, instituted in the Second Subordinate Judge's Court of the 24-Pergunnahs, the parties being residents of Calcutta, when the property sought to be partitioned consisted of (*a*) moveable property situate in Calcutta, (*b*) immoveable property, $\frac{19}{35}$ths, of which was in Calcutta, the rest being in the immediate vicinity, and when it appeared that, if tried in Alipore, an Ameen would have to partition the Calcutta property, and that the suit could be more expeditiously and cheaply tried in the High Court.

Held, that the case was a proper one to be transferred to the High Court to be tried on the original side, and an order was made accordingly.

THE facts which gave rise to the issue of this rule were as follow:—

Khetter Mohun Mitter, the paternal grandfather of the plaintiff, Jotendronauth Mitter who was an infant, died intestate in Calcutta, on the 28th day of March 1888, leaving two sons, Nilmadhub Mitter and Raj Kristo Mitter, one of the defendants an infant, and a widow Nobin Kissory Dassee the second defendant, and his mother, Bama Soondary Dassee. Nilmadhub Mitter was tried for and convicted of the murder of his father, Khetter Mohun Mitter, and sentenced by the High Court to transportation for life.

After the trial, Jotendronauth Mitter, who was the infant son of Nilmadhub, and his mother Nerodemoney Dassee, were ignored by the other members of the family of Khetter Mohun, and accordingly the above suit was instituted in the Court of the Second Subordinate Judge of the 24-Pergunnahs by Jotendronauth, through his mother as next friend, for a declaration of his right to a third share in the estate left by Khetter Mohun, and for partition. The suit was based on the contention that Nilmadhub was excluded from the right to succeed to his father's estate, and that his share devolved on the plaintiff.

The estate consisted of property, both moveable and immoveable, the latter being situated partly in Calcutta, within the original

jurisdiction of the High Court, and partly in the district of the 24-Pergunnahs.

Shortly after the suit had been instituted, an application was made to the High Court in the exercise of its extraordinary original civil jurisdiction on behalf of Nobin Kissory Dassee, the widow of Khetter Mohun, to have the suit transferred from the Court of the Second Subordinate Judge to the original side of the High Court. That application was resisted on behalf of the plaintiff on the ground that no guardian *ad litem* had been appointed on behalf of the infant defendant, Raj Kristo Mitter, and therefore that the application was informal, and could not be granted. The application was refused.

On the 6th June, another application was made by Mr. Pugh on behalf of the infant defendant Raj Kristo, for a rule calling on the plaintiff to show cause why the case should not be transferred to the High Court for trial. The application was based on a petition of Raj Kristo Mitter by Mohendronauth Ghose, his maternal uncle and next friend, and an affidavit of the said Mohendronauth Ghose.

Upon the application being made, a rule was directed to issue, calling on the plaintiff and the defendant, Nobin Kissory Dassee, to show cause why the transfer should not be made, and pending the hearing of the rule all proceedings in the suit in the Court of the Second Subordinate Judge were stayed.

At the time that application was made, and when the rule came on to be heard, no guardian *ad litem* had been appointed for the infant defendant, Raj Kristo Mitter, in the suit.

The rule now came on to be argued.

Mr. *Hill* on behalf of the plaintiff.

Mr. *Pugh* on behalf of the defendant, Nobin Kissory.

Mr. *Bonnerjee* on behalf of the defendant, Raj Kristo.

Mr. *Hill*, showing cause against the rule, contended that there was a preliminary objection to the form of the application, and the rule being made absolute, inasmuch as no guardian *ad litem* of the infant had yet been appointed, and neither under the procedure in England nor that of this country could an appli-

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cation of this kind be made by a next friend. For the procedure in England, he referred to Daniel's Chancery Practice, Vol. I, page 174. And as regards the procedure in this country, he pointed out that Chapter XXXI of the Code of Civil Procedure distinguished between next friends and guardians for the suit; the former term being used in respect of plaintiff minors, and the latter when the minors were defendants. He referred in particular to ss. 440, 441, 443, and 449, and to Belchambers' Rules and Orders (Rules 572 and 583), and contended that there was no precedent for an application such as this being made by a next friend on behalf of an infant defendant, and that no such application could be entertained till a guardian *ad litem* had been appointed.

On the merits, he contended that the suit should not be transferred. A portion of the property being situate in the 24-Pergunnahs, the plaintiff had a right to institute his suit there; and, as he considered that he would be put to much less expense there than if he had sued in the High Court, he had chosen to exercise that right, and there was no reason why the suit should be transferred.

Mr. *Bonnerjee*, in support of the rule, pointed out that the application was not made in a suit which was pending in the High Court, but in the matter of a suit pending in another Court, and therefore was one which was properly made by the infant defendant through a next friend. Even if a guardian *ad litem* had been appointed, this application would have had to be made by a next friend. Section 441 was clear on that point. An application could only be made by a guardian *ad litem* on behalf of an infant to a Court when the suit was actually pending in that Court. This application was therefore in order.

On the merits, he contended that the suit ought to be transferred. The parties all resided in Calcutta. The widow had received letters of administration to the estate from the High Court, limited during the minority of the plaintiff and Raj Kristo, and was accountable to the High Court. The whole of the moveable property was in Calcutta and immoveable property of the value of about Rs. 49,000 was also situate in Calcutta against about Rs. 36,000

worth situate in the district of the 24-Pergunnahs, and that was situate in the immediate Suburbs and close to Calcutta. There seemed no reason why the suit had been filed in the Subordinate Judge's Court other than that a relative of the plaintiff, who was looking after the case, was a pleader of that Court, and it suited his convenience to have it tried there. As to expense, he contended that this particular suit could be much better and more cheaply determined by this Court, with the machinery at its disposal, than in a Mofussil Court, and as the only question to be decided in the case was one of law, that could be decided on settlement of issues, and the expense of such suit in the High Court would be less than it would be in a Mofussil Court. This certainly was a case for the Court to exercise its power and transfer the suit to the High Court.

Mr. *Pugh* supported the application.

The judgment of the Court (NORRIS, J.) was as follows:—

This is an application to transfer a suit from the Court of the Second Subordinate Judge of the 24-Pergunnahs to this Court. The suit was instituted by a minor through his mother as next friend against his grandmother and uncle. The facts are of an extremely unusual character. The minor plaintiff is the son of one Nilmadhub Mitter, who was convicted last year at the criminal sessions, presided over by Wilson, J., of the murder of his father, Khetter Mohun Mitter, and sentenced to transportation for life. He now sues for partition of the family estate, alleging that his father, by virtue of his conviction, is disentitled to succeed to the estate, being civilly dead, and that he, his infant son, is entitled to step into his father's shoes, and is entitled to a partition. The suit is defended by the widow of the murdered gentleman and by the uncle, the uncle being a minor; and the defence is that, under Hindu law, the plaintiff is as much excluded from the inheritance as his father, and entitled to nothing more than maintenance. No guardian *ad litem* has been appointed to the infant in the suit at Alipore, and Mr. Hill objects that the application is not properly framed, because it is made by the next friend instead of the guardian *ad litem*. This is a new question. I have considered the authorities referred to by Mr. Hill, and am of opinion that the

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objection ought not to prevail. If a guardian had been appointed, he might have applied; but none having been appointed, it is open to the next friend to apply.

The next question is as to the transfer of the suit. On the evidence, I think I ought to make the order, and I will state the grounds on which I make it. The major portion of the property, *i.e.*, 49/85th., is in Calcutta. The remaining, 36/85th., though not within the ordinary original civil jurisdiction of this Court, is in the immediate vicinity of Calcutta. Secondly, if the plaintiff obtains a decree declaring his right to partition, the effect would be to make an Ameen of the Alipore Court the person to partition Calcutta property. I can hardly think of anything more inconvenient than that a Mofussil Ameen should be introduced into Calcutta to partition Calcutta property. In the third place, though I do not lay much stress on this reason, I believe this suit is one which can be more cheaply and expeditiously tried in this Court than in the Mofussil. On the whole, I think, for these reasons, that I ought to make the order.

Rule made absolute.

Attorney for Nobin Kissory Dassee and Raj Kristo Mitter: Baboo *Shamal Dhone Dutt.*

Attorney for Jotendro Nath Mitter: Baboo *Kali Das Bhunjo.*

H. T. H.

ORIGINAL CIVIL.

Before Mr. Justice Norris.

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July 13.

IN THE GOODS OF A. J. PRIMROSE (DECEASED.)

Practice—Power of Attorney—Evidence Act (Act I of 1872), s. 85—Letters of Administration, Application for.

On an application for letters of administration to the estate of a deceased, who was domiciled in Scotland, and to whose estate one *P* had been appointed executor *dative quâ Father*, the application being made by one *K* under a power of Attorney granted by *P*, such power not having been executed and authenticated in the manner provided by s. 85 of the Evidence Act,

Held, that the application must be refused.

THIS was an application in Chambers made on the 11th July for letters of administration (with effect throughout the whole of British